

156 FERC ¶ 61,156
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Tennessee Gas Pipeline Company, L.L.C.

Docket No. CP15-148-000

ORDER ISSUING CERTIFICATE

(Issued September 6, 2016)

1. On April 2, 2015, Tennessee Gas Pipeline Company, L.L.C. (Tennessee) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authorization to construct, operate, and maintain certain pipeline and compression facilities located in Tioga and Bradford Counties, Pennsylvania (Susquehanna West Project). For the reasons discussed below, the Commission will grant the requested certificate authorization, subject to the conditions as described herein.

I. Background and Proposals

2. Tennessee, a Delaware limited liability company, is a natural gas company, as defined by section 2(6) of the NGA, engaged in the transportation and storage of natural gas in interstate commerce subject to the jurisdiction of the Commission.³ Tennessee owns and operates an approximately 14,000-mile pipeline system, which extends northeast from Texas, Louisiana, and the Gulf of Mexico through Arkansas, Mississippi, Alabama, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey, Massachusetts, New Hampshire, Rhode Island, and Connecticut.

3. Tennessee proposes the Susquehanna West Project to increase east-to-west capacity on its 300 Line in Pennsylvania. Tennessee asserts that its interstate pipeline system where the project is proposed is currently fully subscribed; therefore, the project

¹ 15 U.S.C. 717f (c) (2012).

² 18 C.F.R. pt. 157 (2016).

³ 15 U.S.C. § 717a(6) (2012).

is necessary to provide additional capacity in the constrained area and to satisfy specific market needs.

4. Tennessee states that the Susquehanna West Project will enable it to provide up to 145,000 dekatherms per day (Dth/d) of additional east-to-west firm incremental transportation service to Statoil Natural Gas LLC (Statoil) to meet market needs in the Northeast. Tennessee states that it will transport gas for Statoil on the 300 Line from Tennessee's existing Shoemaker receipt meter (Meter No. 412846), in Susquehanna County, Pennsylvania, to Tennessee's existing interconnection with the interstate pipeline system of National Fuel Gas Supply Corporation (National Fuel) at the existing Rose Lake Meter Station (Meter No. 420527), in Potter County, Pennsylvania.

5. Specifically, Tennessee proposes to: (i) construct and operate approximately 8.1 miles of new 36-inch-diameter pipeline looping (the "300-3 Loop") along and adjacent to Tennessee's 300 Line in Tioga County;⁴ (ii) construct piping modifications and cooling system upgrades associated with the pipeline loop; (iii) make certain piping and equipment modifications at existing Compressor Station 315 in Charleston Township, Tioga County; Compressor Station 317 in Troy Township, Bradford County; and Compressor Station 319 in Wyalusing Township, Bradford County; (iv) relocate its existing 16,000 International Organization for Standardization (ISO) rated horsepower (hp) Solar Mars 100 compressor unit from Compressor Station 319 to Compressor Station 317; and (v) replace the Solar Mars 100 Unit at Compressor Station 319 with a new 20,500 ISO hp Solar Titan 130 compressor unit, which will result in a net increase of 4,500 ISO hp at that station.

6. Tennessee estimates the cost of the project to be approximately \$156,407,760.

7. Tennessee held a binding open season for the Susquehanna West Project from August 18, 2014 to September 8, 2014. Tennessee offered a minimum of 145,000 Dth/d of east-to-west expansion service from receipt points located in Tennessee's Zone 4 at or near its existing Compressor Station 319 in Bradford County, to one or more delivery points at or near Tennessee's existing interconnection with National Fuel at the Rose Lake Meter station in Potter County. Tennessee states that Statoil was the only bidder and that it executed a binding precedent agreement for the entire 145,000 Dth/d of firm

⁴ The 300 Line right-of-way contains the original 24-inch-diameter pipeline (300-1) and a 30-inch-diameter pipeline loop (300-2). The proposed 8.1-mile-long, 36-inch-diameter 300-3 Loop line would include two sections: (1) a 6.2-mile-long western loop west of Compressor Station 315 and (2) a 1.9-mile-long eastern loop immediately east of Compressor Station 315.

transportation service that Tennessee will be able to provide with the capacity created by the project. Tennessee states that it had no shippers offer to turn back capacity.⁵

8. Tennessee proposes an incremental recourse rate under Rate Schedule FT-A for firm transportation service using the expansion capacity created by the project. However, Tennessee states that Statoil has elected to pay negotiated rates, plus fuel and applicable surcharges for firm transportation service on the project facilities.

9. Tennessee proposes to charge the applicable general system rate under Rate Schedule IT for any interruptible service using the expansion capacity.

II. Procedural Matters

A. Notice, Interventions, Protests, and Comments

10. Notice of Tennessee's application was published in the *Federal Register* on May 4, 2015.⁶ The parties listed in Appendix A filed timely, unopposed motions to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁷

11. The Allegheny Defense Project (Allegheny), Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas, *et al.* (Elizabethtown Gas), Damascus Citizens for Sustainability, Inc. (Damascus Citizens), Appalachian Mountain Advocates, and Sierra Club each filed untimely motions to intervene. On July 27, 2015, January 15, 2016, and April 28, 2016 Tennessee filed motions to answer and answers opposing Allegheny's, Damascus Citizens', and Appalachian Mountain Advocates' late interventions. As has been the Commission's practice in natural gas certificate cases, we will grant these late-filed motions to intervene since doing so at this stage of the proceeding will not unduly delay, disrupt, or otherwise prejudice the proceeding or other parties.⁸

⁵ As part of the open season for the Susquehanna West Project, Tennessee solicited offers from existing shippers to permanently relinquish capacity that could be used to provide transportation service along the path on which its project will create additional capacity. No shippers offered to turn back capacity. Application, at 11.

⁶ 80 Fed. Reg. 21,234 (2015).

⁷ 18 C.F.R. § 385.214(c) (2016).

⁸ 18 C.F.R. § 385.214(d) (2016).

12. Several intervenors filed comments in response to the application. On May 4, 2015, the Tennessee Customer Group filed comments regarding the Commission's policy on non-conforming service agreements.⁹ On May 4, 2015, Statoil filed comments in support of Tennessee's application. On May 4, 2015, Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. (together, Con Ed) jointly filed a limited protest asserting Tennessee did not adequately support its use of the system fuel rate for services using the proposed expansion capacity. The Tennessee Customer Group's and Con Ed's issues are addressed in the rate section of the order.

13. In their late motions to intervene, Allegheny, Damascus Citizens, Appalachian Mountain Advocates, and Sierra Club state that they oppose Tennessee's proposed project and do not believe it is in the public interest.¹⁰ In its July 10, 2015 motion to intervene, Allegheny requests that the Commission take a harder look at the direct, indirect and cumulative effects of the proposed Susquehanna West Project, including the impacts associated with shale development in the Marcellus and Utica shale formations, and other projects on Tennessee's 300 Line that Allegheny asserts are connected, cumulative, and similar actions. Allegheny also requests that the Commission prepare a programmatic environmental impact statement (EIS) for the projects that are bringing the Marcellus and Utica shale gas to downstream markets. Damascus Citizens' December 31, 2015 motion to intervene included comments regarding its concern about the cumulative impacts of this project with Tennessee's proposed Orion Project in Docket No. CP16-4-000 and Triad Expansion Project in Docket No. CP15-520-000, as well as its concern about the levels of radon and other radioactive material in the gas that will be transported using the proposed expansion capacity. On July 27, 2015 and January 15, 2016, Tennessee filed answers to Allegheny's and Damascus Citizens' comments.

⁹ The members of the Tennessee Customer Group filed their timely, unopposed motion to intervene jointly and severally on April 13, 2015, and are listed individually in Appendix A. They include Centerpoint Energy Resources Corp.; City of Clarksville Gas and Water Department, City of Clarksville; City of Corinth Public Utilities Commission; Delta Natural Gas Company, Inc.; Greater Dickson Gas Authority; Hardeman Fayette Utility District; Henderson Utility Department; Holly Springs Utility Department; Humphreys County Utility District; Town of Linden; Morehead Utility Plant Board; Portland Natural Gas System, City of Portland; Savannah Utilities; Springfield Gas System, City of Springfield; City of Waynesboro; West Tennessee Public Utility District; Athens Utilities; City of Florence, Alabama; Hartselle Utilities; City of Huntsville, Alabama; Municipal Gas Authority of Mississippi; North Alabama Gas District; Tuscumbia Utilities and Sheffield Utilities.

¹⁰ Allegheny's July 10, 2015 Motion at 2; Damascus Citizens' December 31, 2015 Motion at 2; Appalachian Mountain Advocates' April 18, 2016 Motion at 2; Sierra Club's July 14, 2016 Motion at 4.

14. On April 18, 2016, Allegheny, together with Appalachian Mountain Advocates, Damascus Citizens, Delaware Riverkeeper Network, and Sierra Club (together referred to herein as “Conservation Group”) submitted comments on the environmental assessment (EA) prepared for Tennessee’s proposed Susquehanna West Project. On April 18, 2016, Tennessee filed comments on the EA. On May 3, 2016, Tennessee filed a response to the Conservation Group’s comments on the EA.¹¹ On June 23, 2016, Allegheny, Appalachian Mountain Advocates, and Damascus Citizens jointly filed an answer to Tennessee’s May 3 answer.¹²

B. Request for Hearing and Consolidation

15. Sierra Club’s July 14, 2016 motion to intervene includes a request for formal hearing on the applications for Tennessee’s proposed Susquehanna West Project, the proposed Triad Expansion Project, and the proposed Orion Project, including on the environmental and socio-economic impacts of the projects.¹³ We deny Sierra Club’s request. The Commission has broad discretion to structure its proceedings so as to resolve a controversy in the way it best sees fit.¹⁴ An evidentiary, trial-type hearing is necessary only where there are material issues of fact in dispute that cannot be resolved on the basis of the written record.¹⁵ Sierra Club raises no material issue of fact that the Commission cannot resolve on the basis of the written record. Accordingly, the Commission will deny the request for a formal hearing.

16. We also deny the motion to consolidate this proceeding with the proceedings in Docket Nos. CP15-520-000 and CP16-4-000 filed by Allegheny, Appalachian Mountain

¹¹ Tennessee’s answer to the Conservation Group’s comments on the EA is permitted by Rule 385.213(a)(3), which provides that an answer may be made to any pleading that is not otherwise prohibited. 18 C.F.R. § 385.213(a)(3) (2016).

¹² Rule 385.213(a)(2) of the Commission’s Rules of Practice and Procedures prohibits an answer to an answer, unless otherwise ordered by the decision authority. 18 C.F.R. § 385.213(a)(2) (2016). However, we will accept the answer because it provides information that has assisted in our decision-making process.

¹³ Sierra Club’s July 14, 2016 Motion at 2.

¹⁴ See *Stowers Oil and Gas Co.*, 27 FERC ¶ 61,001 (1984) (Commission has discretion to manage its own procedures); *PJM Interconnection, L.L.C.*, 120 FERC ¶ 61,013 (2007).

¹⁵ See, e.g., *Dominion Transmission, Inc.*, 141 FERC ¶ 61,183, at P 15 (2012); *Southern Union Gas Co., v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988).

Advocates, Damascus Citizens, Delaware Riverkeeper, and Sierra Club on August 22, 2016. The Commission consolidates matters only if a hearing is required to resolve common issues of law and fact, and that consolidation will ultimately result in greater administrative efficiency.¹⁶ We do not believe administrative efficiency will be served by consolidating the three separate certificate proceedings in view of the fact that the issues raised in the motion to consolidate are addressed in this order without need for an evidentiary hearing.¹⁷

III. Discussion

17. Since Tennessee seeks to construct and operate facilities to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of subsections (c), and (e) of section 7 of the NGA.¹⁸

A. Application of the Certificate Policy Statement

18. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹⁹ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

19. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on

¹⁶ *Midcontinent Express Pipeline, LLC*, 124 FERC ¶ 61,089, at P 27 (2008).

¹⁷ We note that the assertions of common issues of law and fact in the three proceedings are the same arguments that are discussed in the environmental section below, i.e., that the Commission must consider the three projects together in a single environmental analysis.

¹⁸ 15 U.S.C. §§ 717f(c), and (e) (2012).

¹⁹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order clarified*, 90 FERC ¶ 61,128, *order further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

20. As stated above, the threshold requirement is that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers. The Commission has previously determined that, in general, when a pipeline proposes an incremental rate to recover the cost of a proposed project, the pipeline satisfies the Certificate Policy Statement's threshold requirement that the project is not subsidized by existing shippers.²⁰ Tennessee proposes incremental rates for firm transportation services using the proposed expansion capacity. As discussed in greater detail below, the incremental reservation and commodity rates are designed to recover the costs to construct the proposed project and provide service using the capacity and are higher than Tennessee's existing applicable rates for service. Also as discussed below, Tennessee's proposal to use its system fuel rate for services using the expansion capacity will recover incremental fuel costs. Therefore, we find that Tennessee's existing customers will not subsidize the project, and the threshold requirement of no subsidization is met.

21. The proposed project will not adversely affect Tennessee's existing customers because the project is designed to provide the proposed services while maintaining Tennessee's current obligations.

22. Additionally, the proposed project will not adversely affect other existing pipelines or their captive customers because it is not intended to replace existing customers' service on any other existing pipeline. Further, no other pipelines or their customers have protested the application.

23. The project's 8.1 miles of new pipeline looping will run parallel to Tennessee's existing 300 Line, within the existing right-of-way or immediately adjacent to it, which in addition to maximizing the use of areas previously disturbed for construction of the existing 300 Line facilities, will minimize both the number of landowners from which new right-of-way will need to be acquired and the potential need for reliance on eminent

²⁰ See *Texas Gas Transmission, LLC*, 154 FERC ¶ 61,032, at P 11 (2016).

domain. While up to 80 feet of construction workspace width will need to be used outside the existing permanent right-of-way in some areas, only 25 feet will be retained as new additional permanent right-of-way following construction of the pipeline loop. The project's modifications and facilities to increase compression on Tennessee's system will be located within Tennessee's current property boundaries at three existing compressor stations. In view of these considerations, we find that the proposed project has been designed to minimize the impacts on landowners and communities.

24. Based on the benefits Tennessee's proposal will provide; the lack of adverse effects on existing customers, other pipelines, and their captive customers; and the minimal adverse effects on landowners or communities, we find that Tennessee's proposed project is consistent with the Certificate Policy Statement. Based on this finding and the environmental review for Tennessee's proposed project, as discussed below, we further find that the public convenience and necessity require approval and certification of the project under section 7 of the NGA, subject to the environmental and other conditions in this order.

B. Rates

1. Initial Rates

25. The Susquehanna West Project will enable Tennessee to provide up to 145,000 Dth/d of incremental east-to-west service on its 300 Line from its Compressor Station 319 in Bradford County, Pennsylvania, to its Rose Lake Meter Station in Potter County, Pennsylvania, and interim delivery points. Tennessee proposes incremental recourse rates under Rate Schedule FT-A for the expansion capacity. Tennessee derived its proposed incremental recourse rates based on the project facilities' design capacity and an estimated annual cost of service for the project facilities of approximately \$30.1 million. Tennessee calculated the incremental cost of service using the income tax rates, capital structure, and rate of return required by the terms of its rate case settlement in Docket No. RP15-990-000 for purposes of determining cost-of-service levels in Tennessee's certificate applications.²¹ Tennessee used a straight-line depreciation rate of 3.33 percent based on the estimated 30-year useful life of the project facilities.

²¹ Tennessee filed an uncontested offer of settlement in Docket No. RP15-990-000 in lieu of a general section 4 rate case filing, as provided for in its 2011 rate settlement in Docket No. RP11-1566-000. In a letter order issued on July 1, 2015, the Commission approved the settlement in Docket No. RP15-990-000, which provides, *inter alia*, that for purposes of determining cost-of-service levels in Tennessee's certificate applications, Tennessee shall continue to abide by the terms of the 2011 rate settlement in

26. Specifically, Tennessee proposes an incremental maximum monthly FT reservation recourse charge of \$17.3057 per Dth and a daily commodity charge of \$0.000 per Dth. Tennessee states that the incremental recourse rate is higher than the otherwise applicable general system rate for comparable service in Zone 4. Tennessee proposes to charge the applicable general system rate under Rate Schedule IT for any interruptible service using the expansion.

27. Tennessee did not classify its proposed cost of service between fixed and variable costs as part of its application. In an October 30, 2015 data response, under the Commission's Uniform System of Accounts (USofA), Tennessee itemized \$263,000 in non-labor costs for USofA Account No. 853, *Compressor station labor and expenses*, and \$61,000 in non-labor costs for Account No. 864, *Maintenance of compressor station equipment*, for a total of \$324,000 in non-labor costs.²² Tennessee classified \$112,000 of these non-labor costs as variable costs. In support of its rate design proposal, Tennessee also explained in its data response that the estimated variable operation and maintenance (O&M) costs for the project represent less than 0.4 percent of the total project cost of service and, given the *de minimis* nature of these costs, Tennessee had assigned variable costs to the demand component for rate design purposes.²³

28. Section 284.7(e) of the Commission's regulations requiring the use of straight-fixed variable (SFV) rate design does not allow the recovery of variable costs in the reservation charge.²⁴ While Tennessee explained in its October 30, 2015 data response that it had included estimated variable costs in the reservation charge due to the *de minimus* nature of the proposed project's variable costs, there is no "*de minimis*" cost exception to the rule.²⁵ Section 284.10(c)(2) states that variable costs should be used to determine the volumetric rate.²⁶

Docket No. RP11-1566-000 that required Tennessee to use the cost of service inputs used in calculating the 1996 settlement rates approved in Docket No. RP95-112-000. *See Tennessee Gas Pipeline Company, L.L.C.*, 152 FERC ¶ 61,009, at P 10 and n.6 (2015).

²² The Commission's prescribed system of accounts for regulated natural gas companies is set forth in Part 201 of the regulations. 18 C.F.R. pt. 201 (2016).

²³ Tennessee's October 30, 2015 Response to Data Request, at Question 4.

²⁴ 18 C.F.R. § 284.7(e) (2016).

²⁵ *See, e.g., Algonquin Gas Transmission, LLC*, 151 FERC ¶ 61,118, at P 22 (2015).

²⁶ 18 C.F.R. § 284.10(c)(2) (2016).

29. Further, Commission policy generally requires that all non-labor costs to operate and maintain compression facilities and included in Account Nos. 853 and 864 be classified as variable costs²⁷ and, therefore, recovered through a commodity charge. Tennessee identified a total of \$324,000 in non-labor costs for Account Nos. 853 and 864 in its October 30, 2015 data response and without explanation or support classified only \$112,000 of those costs as variable costs. Costs that vary based on throughput, including, but not limited to, non-labor portions of compression O&M costs are variable costs and should be classified as such consistent with Commission precedent.²⁸ Therefore, we will require Tennessee to reclassify the entire \$324,000 in Account Nos. 853 and 864 non-labor costs as variable costs and recalculate its incremental recourse reservation charge to reflect the removal of all variable costs. We do not anticipate that recalculation of Tennessee's proposed \$17.3057 per Dth reservation charge to remove the variable costs identified will result in an incremental reservation charge that is lower than its otherwise applicable general system rate for comparable service in Zone 4. Therefore, because the appropriately calculated incremental reservation charge will be higher than the currently applicable reservation charge, the Commission will require use of the recalculated incremental reservation charge as the initial recourse reservation charge for firm service using the proposed incremental capacity.

30. Commission policy requires that where an incremental rate is lower than the system rate, the system rate is used for providing service.²⁹ Based on our preliminary analysis, it appears that an incremental commodity charge would be lower than

²⁷ See, e.g., *Equitrans, L.P.*, 153 FERC ¶ 61,381, at P 22 and n.25 (2015) (requiring recalculation of proposed reservation rate and usage charge to remove estimated Account Nos. 853 and 864 non-labor O&M costs from reservation rate and to include those variable costs in the usage charge); *Columbia Gulf Transmission, LLC*, 152 FERC ¶ 61,214, at P 20 (2015) (requiring recalculation of proposed rates to provide for recovery of certain non-labor O&M, including Account Nos. 853 and 864 non-labor O&M costs, through the usage charge, not the reservation rate).

²⁸ See, e.g., *Ozark Gas Transmission System*, 64 FERC ¶ 61,298, at n.5 (1993) ("The Commission has classified non-labor compression and processing O&M costs as variable for more than 40 years [citations omitted]."); *Alabama-Tennessee Natural Gas Co.*, 38 FERC ¶ 61,315, at 62,023 (1987) ("Account No. 858 costs should be classified on an as-billed basis."); *Dominion Cove Point LNG, LP*, 153 FERC ¶ 61,074, at P 23 (2015).

²⁹ See *Tennessee Gas Pipeline Company, L.L.C.*, 154 FERC ¶ 61,191, at P 22 (2016).

Tennessee's generally applicable commodity charge. Therefore, Tennessee must revise its proposed incremental commodity charge to reflect its generally applicable commodity charge.

31. The expansion capacity created by the Susquehanna West Project will be integrated with the existing capacity on Tennessee's system. Therefore, Tennessee's proposal to use its currently effective system rate under Rate Schedule IT rate for any interruptible service using the expansion capacity is consistent with Commission policy.³⁰

32. Tennessee states that it has executed a precedent agreement with Statoil to provide service at negotiated rates and will file a summary of the negotiated rate service agreement with the Commission. Tennessee must file either its negotiated rate agreement or tariff records setting forth the essential terms of the agreement associated with the project, in accordance with the Alternative Rate Policy Statement³¹ and the Commission's negotiated rate policies.³² Such a filing must be made at least 30 days, but not more than 60 days, before the proposed effective date for such rates.³³

33. Section 154.309 of the Commission's regulations³⁴ includes bookkeeping and accounting requirements applicable to all expansions for which incremental rates are approved to ensure that costs are properly allocated between a pipeline's existing

³⁰ See, e.g., *Trunkline Gas Co., LLC*, 153 FERC ¶ 61,300, at P 62 (2015).

³¹ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996), *petition for review denied sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (Alternative Rate Policy Statement).

³² *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *reh'g dismissed and clarification denied*, 114 FERC ¶ 61,304 (2006).

³³ Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. 18 C.F.R. § 154.112(b) (2016). See also, e.g., *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,198, at P 33 (2014).

³⁴ 18 C.F.R. § 154.309 (2016).

shippers and the incremental expansion shippers. Therefore, Tennessee must keep separate books and accounting of costs and revenues attributable to the Susquehanna West Project as required by section 154.309.³⁵ The books should be maintained with applicable cross-references. This information must be in sufficient details to that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case, and the information must be provided consistent with Order No. 710.³⁶

2. Fuel

34. As described above, Tennessee's Susquehanna West Project will include 8.1 miles of new 36-inch-diameter pipeline looping, relocation of an existing 16,000 ISO hp compressor unit from Compressor Station 319 to Compressor Station 317, and replacement of an existing compressor unit at Compressor Station 319 with a new 20,500 ISO hp compressor unit with a resulting net increase of 4,500 ISO hp at that station. Tennessee will use the expansion capacity created by the new facilities to provide up to an additional 145,000 Dth/d of firm transportation service.

35. Tennessee proposes to charge the applicable general system fuel and lost and unaccounted-for charges and electric power cost charges for services using the project's expansion capacity.³⁷ Tennessee's application did not include an analysis to support its proposed use of system rates and charges for the expansion services, and Con Ed filed a limited protest requesting that the Commission require Tennessee to provide adequate information to demonstrate that the proposal will not result in subsidization by existing shippers.

36. In response to a staff data request, Tennessee filed work papers detailing its estimated pre-expansion and post-expansion fuel rates.³⁸ Based on Tennessee's analysis, we find that applying the system fuel rate and charges is acceptable.³⁹

³⁵ 18 C.F.R. § 154.309 (2016).

³⁶ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267, at P 23 (2008).

³⁷ In its application, Tennessee states that its proposed incremental recourse rate will include "applicable general system fuel and lost and unaccounted-for charges and electric power charges." Application at 12. Tennessee states that its negotiated-rate agreement with Statoil provides that Statoil will pay the "applicable (whether incremental or general system) Fuel and Loss Retention Percentage and Electric Power Cost Rates under Tennessee's Rate Schedule FT-A, as approved by the Commission for services on the Project." Application at 11-12, n.6.

³⁸ See Tennessee's October 30, 2015 Data Response to Question 4.

3. Non-Conforming Agreement

37. Tennessee filed a public version of its proposed transportation agreement with Statoil that contains non-conforming provisions.⁴⁰ Tennessee requests that the Commission review and approve the non-conforming provisions of the publicly filed version of the proposed transportation agreement. Tennessee states that the agreement differs from the *pro forma* service agreement in Tennessee's tariff in the following ways:

- The "Whereas" clauses in the transportation agreement with Statoil describe the precedent agreement and the specific transaction between Tennessee and Statoil. The *pro forma* service agreement in Tennessee's tariff does not provide for the inclusion of such information.
- Article II (Sections 2.1 and 2.2) addresses regulatory authorization of the project and the commencement date of the transportation agreement, which is tied to the commencement date of the project facilities. Article II of the *pro forma* agreement does not contain this regulatory authorization or commencement date language.
- Article IV indicates that Tennessee will construct the project facilities to provide transportation service for the project shipper. Article IV of the *pro forma* agreement contemplates that the facilities necessary to provide transportation service for the shipper are already in place.
- Sections 6.1, 11.1(a), and 12.1 have been modified to reflect the commencement date for the project because Tennessee must construct the project facilities in order to provide service for Statoil under the service agreement. As indicated above, the *pro forma* agreement contemplates that the facilities necessary to provide service for the shipper are already in place.
- Tennessee proposes an extension right that gives Statoil a one-time contractual right to extend the 15- year primary term for an Extension Period of 5 years at the same negotiated rate that was in effect during the primary term. For periods beyond the Extension Period, Statoil will have Right of First Refusal (ROFR) rights consistent with the terms of Article V, Section 4.1 of the General Terms and Conditions of Tennessee's tariff. Tennessee states these extension rights and

³⁹ We note that Con Ed did not file any additional comments following Tennessee's submission of its data response addressing Con Ed's concerns.

⁴⁰ Application, Exhibit I.

contractual ROFR provisions in the transportation agreement with Statoil were included in their precedent agreement and reflect the primary contractual benefits that were provided to Statoil as an anchor shipper in order to encourage it to make a binding commitment to the project.

38. Tennessee states that although the provisions include material deviations from Tennessee's *pro forma* service agreement, they are not unduly discriminatory and should be considered permissible.

39. Tennessee Customer Group filed comments on May 4, 2015, in response to Tennessee's requests that the Commission approve non-conforming provisions in Tennessee's transportation agreement with Statoil. Tennessee Customer Group references the Commission's order in the certificate proceeding on Tennessee's Niagara Expansion Project in which the Commission clarified its policy with respect to requests by applicants for upfront determinations in certificate orders concerning non-conforming agreements with project shippers.⁴¹ As the Tennessee Customer Group states, in that proceeding the Commission clarified that in order for an applicant to receive an upfront determination in a certificate proceeding regarding potentially non-conforming provisions, the relevant portions of the filed redline/strikeout versions of the service agreements must be filed as public (i.e., not under any claim of privilege) to ensure that the Commission is not constrained in its ability to fully explain its rulings on such provisions.⁴² Tennessee Customer Group requests that the Commission apply that policy in this proceeding.

40. In its October 30, 2015 data response, Tennessee clarified that it is not seeking a preliminary determination from the Commission approving the provisions that were redacted from the public version of its transportation agreement with Statoil.⁴³ Rather, Tennessee seeks a preliminary determination approving only those non-conforming provisions that are included in the public copy.

⁴¹ *Tennessee Gas Pipeline Company, L.L.C.*, 150 FERC ¶ 61,160 (2015).

⁴² *Id.* P 44.

⁴³ In its certificate application, Tennessee stated that the non-conforming provisions in the transportation agreement with Statoil also include provisions in Article XVI, *Creditworthiness*, that it redacted from the filed public version. Tennessee clarifies that it does not seek a Commission ruling at this time on these non-conforming provisions of the transportation agreement with Statoil, which relate to certain credit support to which Statoil has agreed. We will review these provisions and determine whether they are acceptable when Tennessee files the un-redacted version of the transportation agreement prior to commencing service as required by section 154.112 of the regulations.

41. In *Columbia Gas Transmission Corp.*,⁴⁴ the Commission clarified that a material deviation is any provision in a service agreement that (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (2) affects the substantive rights of the parties. However, not all material deviations are impermissible. As explained in *Columbia*, provisions that materially deviate from the corresponding *pro forma* service agreement fall into two general categories: (1) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers; and (2) provisions the Commission can permit without a substantial risk of undue discrimination.⁴⁵ In other proceedings, we have also found that non-conforming provisions may be necessary to reflect the unique circumstances involved with constructing new infrastructure and to provide the needed security to ensure the viability of a project.⁴⁶

42. We find that the above described non-conforming provisions in the public version of its transportation agreement with Statoil constitute material deviations from Tennessee's *pro forma* service agreement for Rate Schedule FT-A. However, we further find that these non-conforming provisions are permissible because they do not present a risk of undue discrimination, do not adversely affect the operational conditions of providing service to other shippers, and do not result in any shipper receiving a different quality of service.⁴⁷ When Tennessee files its non-conforming agreement with Statoil or any other shipper, it must identify and disclose all non-conforming provisions or agreements affecting the substantive rights of the parties under the tariff or service agreement. This required disclosure includes any such transportation provision or agreement detailed in a precedent agreement that survives the execution of the service agreement.⁴⁸

⁴⁴ 97 FERC ¶ 61,221 (2001) (*Columbia*); *ANR Pipeline Co.*, 97 FERC ¶ 61,224 (2001) (*ANR*).

⁴⁵ *Columbia*, 97 FERC at 62,002; *ANR*, 97 FERC at 62,022.

⁴⁶ *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 (2008); *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 78 (2006).

⁴⁷ *Gulf South Pipeline Co.*, 115 FERC ¶ 61,123 (2006); *Gulf South Pipeline Co.*, 98 FERC ¶ 61,318, at P 4 (2002).

⁴⁸ A Commission ruling on non-conforming provisions in a certificate proceeding does not waive any future review of such provisions when the executed copy of the non-conforming agreement(s) and a tariff record identifying the agreement(s) as non-conforming are filed with the Commission consistent with section 154.112 of the

C. Environmental Analysis

43. On June 10, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Susquehanna West Project and Request for Comments on Environmental Issues* (NOI). The NOI was published in the Federal Register on June 16, 2015,⁴⁹ and mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. We received comments from the Pennsylvania Department of Environmental Protection; Pennsylvania Department of Conservation and Natural Resources; Pennsylvania Department of Transportation; Stockbridge-Munsee Tribal Historic Preservation Office; and Allegheny. The primary environmental issues raised during scoping relate to impacts on wetlands and waterbodies, fish, wildlife, cultural resources, air quality, and impacts associated with road crossings.

44. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),⁵⁰ Commission staff prepared an EA for Tennessee's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, socioeconomics, cumulative impacts, and alternatives. The EA addressed all substantive comments received in response to the NOI.

45. The EA was issued for a 30-day comment period and placed into the public record on March 17, 2016. On April 18, 2016, the Conservation Group filed comments on the EA raising several environmental issues. First, the Conservation Group claims that Commission staff should have considered the Susquehanna West, Triad Expansion, and Orion Projects in a single EIS because they are connected, cumulative, and similar actions. Second, they assert that the EA failed to take a hard look at the direct, indirect, and cumulative effects of the Susquehanna West Project, as required under NEPA. The Conservation Group also argues that the Commission should issue one programmatic EIS for all projects related to take away capacity from the Appalachian Basin. Lastly, they call into question the Commission's compliance with the Endangered Species Act (ESA). Tennessee filed an answer to the Conservation Group's comments on May 3, 2016, and

Commission's regulations. *Tennessee Gas Pipeline Co., L.L.C.*, 150 FERC ¶ 61,160 at P 44 and n.33.

⁴⁹ 80 Fed. Reg. 34,397 (2015).

⁵⁰ 42 U.S.C. §§ 4321-4370f (2006).

on June 23, 2016, Allegheny, Appalachian Mountain Advocates, and Damascus Citizens jointly replied to Tennessee's answer.

46. In addition, Tennessee filed updates and clarifications on the EA. These comments are further discussed below.

1. Segmentation

47. Council of Environmental Quality (CEQ) regulations require the Commission to include "connected actions," cumulative actions," and "similar actions" in its NEPA analyses.⁵¹ "An agency impermissibly 'segments' NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration."⁵² Connected actions include actions that: (i) automatically trigger other actions, which may require environmental impact statements; (ii) cannot or will not proceed unless other actions are taken previously or simultaneously; (iii) are interdependent parts of a larger action and depend on the larger action for their justification.⁵³

48. In evaluating whether multiple actions are, in fact, connected actions, courts have employed a "substantial independent utility" test, which the Commission finds useful for determining whether the three criteria for a connected action are met. The test asks "whether one project will serve a significant purpose even if a second related project is not built."⁵⁴ For proposals that connect to or build upon an existing infrastructure network, this standard distinguishes between those proposals that are separately useful from those that are not. While the analogy between the two is not apt in many regards, similar to a highway network, "it is inherent in the very concept of" the interstate pipeline

⁵¹ 40 C.F.R. § 1508.25(a)(1)-(3) (2016).

⁵² *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014) (*Delaware Riverkeeper Network*). Unlike for connected and cumulative actions, for similar actions an agency has some discretion about combining environmental review. E.g., *Earth Island Inst. v. U.S. Forest Serv.*, 351 F.3d 1291, 1305-1306 (9th Cir. 2003).

⁵³ 40 C.F.R. § 1508.25(a)(1) (2016).

⁵⁴ *Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987). See also *O'Reilly v. U.S. Army Corps of Eng'rs*, 477 F.3d 225, 237 (5th Cir. 2007) (defining independent utility as whether one project "can stand alone without requiring construction of the other [projects] either in terms of the facilities required or of profitability.").

grid “that each segment will facilitate movement in many others; if such mutual benefits compelled aggregation, no project could be said to enjoy independent utility.”⁵⁵

49. In *Delaware Riverkeeper Network v. FERC*, the court ruled that individual pipeline proposals were interdependent parts of a larger action where four pipeline projects, when taken together, would result in “a single pipeline” that was “linear and physically interdependent” and where those projects were financially interdependent.⁵⁶ The court put a particular emphasis on the four projects’ timing, noting that when the Commission reviewed the proposed project, the other projects were either under construction or pending before the Commission.⁵⁷ In a later case, the same court indicated that in considering a pipeline application, the Commission need not jointly consider projects that are unrelated and do not depend on each other for their justification.⁵⁸

50. The Conservation Group argues that the EA improperly segmented the NEPA review by failing to analyze Tennessee’s proposed Susquehanna West, Triad Expansion, and Orion Projects in a single EIS as connected actions, similar actions, and cumulative actions. Tennessee’s applications for the Triad Expansion Project and Orion Project are currently under review by the Commission in Docket Nos. CP15-520-000 and CP16-4-000, respectively.

51. Demand for natural gas transportation increases incrementally; accordingly, natural gas companies expand their pipeline systems incrementally to meet the demand. Based on these three projects’ geographically separate facilities, separate transportation paths serving discrete receipt and delivery points, and independent financing under long-term contracts, we conclude that each project has substantial independent utility and the projects are not physically interdependent. Though each project will construct or modify facilities at a site on the 300 Line, the facilities will be geographically separate. As noted above, the Susquehanna West Project facilities include 8.1 miles of 36-inch-diameter pipeline loop in Tioga and Bradford Counties, Pennsylvania, with associated modifications to Compressor Station 315 in Tioga County and Compressor Stations 317 and 319 in Bradford County, and will enable Tennessee to provide 145,000 Dth/d of additional east-to-west firm natural gas transportation service, subscribed by a single

⁵⁵ *Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d at 69.

⁵⁶ *Delaware Riverkeeper Network*, 753 F.3d at 1314.

⁵⁷ *Id.*

⁵⁸ See *Myersville Citizens for a Rural Cmty. Inc. v. FERC*, 783 F.3d 1301, 1326 (D.C. Cir. 2015) (*Myersville*).

shipper, Statoil. By contrast, the Triad Expansion Project facilities, proposed to be located roughly 25 miles east of the Susquehanna West Project facilities, include 7.0 miles of new 36-inch-diameter pipeline loop and non-compression modifications to Compressor Station 321, entirely in Susquehanna County, Pennsylvania, to enable Tennessee to provide 180,000 Dth/d of west-to-east firm natural gas transportation subscribed by Invenergy LLC. The Orion Project facilities, located roughly 50 miles east of the Susquehanna West Project facilities, include 8.2 miles of 36-inch-diameter pipeline loop in Wayne and Pike Counties, Pennsylvania, to enable Tennessee to provide 135,000 Dth/day of additional west-to-east firm natural gas transportation service, which has been subscribed by three shippers, South Jersey Resources Group LLC, South Jersey Gas Company, and Cabot Oil & Gas Corporation.

52. The Susquehanna West Project does not require or “trigger” construction or operation of the Triad Expansion or Orion Projects.⁵⁹ Moreover, neither the Triad Expansion or Orion Projects require the Susquehanna West Project facilities, thus none of these three projects depend on the others for their justification.⁶⁰ Given the above, the Susquehanna West, Triad Expansion, and Orion Projects are not connected actions as defined by section 1508.25(a)(1) of the CEQ regulations.

53. Similar actions have “similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.”⁶¹ An agency “may wish to analyze these actions in the same impact statement,” but is not required to do so.⁶² The Commission may consider similar actions in the same environmental analysis if it finds that it is the “best way to assess adequately the combined impacts of [the] similar actions.”⁶³

54. The Triad Expansion Project and Orion Project and their associated impacts, while similar in timing, are geographically distinct from the Susquehanna West Project. The three projects are in separate counties. Compressor Station 319, the Susquehanna West Project’s easternmost facility, is approximately 25 miles from the pipeline loop being constructed as part of the Triad Expansion Project and approximately 50 miles from the Orion Project’s pipeline loop. As described in the EA, almost all the Susquehanna West

⁵⁹ See 40 C.F.R. § 1508.25(a)(1)(i) and (ii) (2016).

⁶⁰ *Id.* at § 1508.25(a)(1)(iii).

⁶¹ *Id.* at § 1508.25(a)(3) (defining similar actions).

⁶² *Id.*

⁶³ *Id.*

Project impacts are contained within or adjacent to the construction work areas.⁶⁴ Because these projects will not occur close in distance to one another, we conclude that analyzing them in the same NEPA document is neither necessary nor the best way to assess their combined impacts or reasonable alternatives.

55. Cumulative actions are those “which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.”⁶⁵ Given the nature and location of projects’ facilities as discussed above and in the EA,⁶⁶ we conclude that the three projects are not cumulative actions because they lack the potential to produce cumulatively significant impacts. However, the EA for the Susquehanna West Project included both the Triad Expansion Project and the Orion Project in its investigation of potential cumulative impacts, as discussed in further detail below.

2. Cumulative Impacts

56. CEQ defines cumulative impacts as “the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.”⁶⁷ The requirement that an impact must be “reasonably foreseeable” to be considered in a NEPA analysis applies to both indirect and cumulative impacts.

57. The “determination of the extent and effect of [cumulative impacts], and particularly identification of the geographic area within which they may occur, is a task assigned to the special competency of the appropriate agencies.”⁶⁸ CEQ has explained that “it is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful.”⁶⁹ Further, a cumulative impact analysis need only include “such information as appears to be

⁶⁴ EA at 61.

⁶⁵ 40 C.F.R. §1508.25(a)(2) (2016).

⁶⁶ See EA at 66.

⁶⁷ 40 C.F.R. § 1508.7 (2016).

⁶⁸ *Kleppe v. Sierra Club*, 427 U.S. 390, 413 (1976) (Kleppe).

⁶⁹ CEQ, *Considering Cumulative Effects Under the National Environmental Policy Act* at 8 (January 1997) (1997 CEQ Guidance), http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf.

reasonably necessary under the circumstances for evaluation of the project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well-nigh impossible.”⁷⁰ An agency’s analysis should be proportional to the magnitude of the environmental impacts of a proposed action; actions that will have no significant direct and indirect impacts usually require only a limited cumulative impacts analysis.⁷¹

58. As we have explained, consistent with CEQ guidance, in order to determine the scope of a cumulative impacts analysis for each project, Commission staff establishes a “region of influence” in which various resources may be affected by a proposed project and other past, present, and reasonably foreseeable future actions.⁷² While the scope of our cumulative impacts analysis will vary from case to case, depending on the facts presented, we have concluded that, where the Commission lacks meaningful information regarding potential future natural gas production in a region of influence, production-related impacts are not sufficiently reasonably foreseeable so as to be included in a cumulative impacts analysis.⁷³

59. The Conservation Group claims that the EA fails to take a hard look at the cumulative impacts resulting from the Susquehanna West, Triad Expansion, and Orion Projects, including those impacts associated with natural gas development. The Conservation Group also states that the EA arbitrarily limits the cumulative impact analysis to impacts on forested lands, forested and scrub-shrub wetlands, noise, and air quality. Finally, the Conservation Group states that the EA’s analysis of cumulative impacts is impermissibly restrictive and understates the significant impacts that pipeline construction activities cause.

60. In considering cumulative impacts, CEQ advises that an agency first identify the significant cumulative effects associated with a proposed action.⁷⁴ The agency should

⁷⁰ *Natural Res. Def. Council, Inc. v. Callaway*, 524 F.2d 79, 88 (2d Cir. 1975).

⁷¹ See CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 2-3 (June 24, 2005) (2005 CEQ Guidance), http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-PastActsCumulEffects.pdf.

⁷² See, e.g., *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255, at P 113 (2014).

⁷³ *Id.* P 120.

⁷⁴ 1997 CEQ Guidance at 11.

then establish the geographic scope for analysis.⁷⁵ Next, the agency should establish the time frame for analysis, equal to the timespan of a proposed project's direct and indirect impacts.⁷⁶ Finally, the agency should identify other actions that potentially affect the same resources, ecosystems, and human communities that are affected by the proposed action.⁷⁷ As noted above, CEQ advises that an agency should relate the scope of its analysis to the magnitude of the environmental impacts of the proposed action.⁷⁸

61. The cumulative effects analysis in the EA took precisely the approach the CEQ guidance advises.⁷⁹ Appendix B, Table 4 of the EA lists present and reasonably foreseeable projects or actions that are occurring or may occur within the geographic scope of potential impact identified for each resource that, when their effects are combined with those of the Susquehanna West Project, may result in cumulative impacts.⁸⁰

62. The EA determined that the Susquehanna West Project would result in potential cumulative impacts on forested land, forested and scrub-shrub wetlands, noise, and air quality. More specifically, the EA determined that the project's impacts on geology, soils, water resources, fish, wildlife, cultural resources, some land uses, recreation, and visual resources would be minimal and temporary, and thus would not contribute

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See 2005 CEQ Guidance at 2-3, n.89, which notes that agencies have substantial discretion in determining the appropriate level of their cumulative impact assessments and that agencies should relate the scope of their analyses to the magnitude of the environmental impacts of the proposed action. Further, the Supreme Court held that determining the extent and effect of cumulative impacts, "and particularly identification of the geographic area within which they occur, is a task assigned to the special competency of the agenc[y]," and is overturned only if arbitrary and capricious. See *Kleppe*, 427 U.S. at 414-15.

⁷⁹ See EA at 61-70. We also note that the 1997 Guidance states that the "applicable geographic scope needs to be defined case by case." 1997 CEQ Guidance at 15.

⁸⁰ See EA at 82-63 (identifying the geographic area in which project impacts will be felt).

significantly to cumulative impacts with other actions.⁸¹ With regard to wetlands and noise, the EA acknowledged the impacts the project would have on these resources, but concluded that the project impacts would be localized and minimal, therefore would not contribute to cumulative impacts on wetland resources or on the noise environment in the project area.⁸² Accordingly, the EA correctly focuses the cumulative impact analysis on forested lands and air quality.

63. As stated in the EA, construction impacts on forested lands would be largely contained within or adjacent to proposed project workspaces. Due to the localized nature of potential project impacts on these resources, it is not expected that impacts on forested lands will be experienced beyond the immediate vicinity of the project. Accordingly, cumulative impacts on forested lands were assessed for other projects occurring within a 0.5-mile radius of the proposed project. With regard to air quality, the EA considered the potential for cumulative air quality emissions both during construction and operation of the project.⁸³ While Appendix B, Table 4 of the EA identifies existing and reasonably foreseeable projects or actions with potential air quality impacts that would be located within 30 kilometers (10 miles) of the Susquehanna West Project, station-specific air dispersion modeling conducted for Compressor Stations 317 and 319 indicated that the highest concentrations of nitrogen oxides would occur 7.23 kilometers and 0.26 kilometers from the stations, respectively. Air screening analyses identified nitrogen oxides as the pollutant having the potential to exceed the significant impact level in, but not outside, the highest concentration areas.⁸⁴ However, as indicated in the EA, emissions would not exceed applicable National Ambient Air Quality Standards.⁸⁵ Therefore, to be conservative, emissions from the two stations cumulative with stationary sources within a 10 kilometer (6.2-mile) radius as identified in Appendix B, Table 4 of the EA were modeled and analyzed.⁸⁶ In addition, the EA included emissions from the proposed Liberty Power Plant, even though it would be located 17 kilometers from the Susquehanna West Project at its closest point and beyond the dispersion range of

⁸¹ EA at 61.

⁸² EA at 62.

⁸³ EA at 68 – 69.

⁸⁴ EPA sets the significant impact level (SIL) of various pollutants.

⁸⁵ EA at 51-52.

⁸⁶ EA at 69 and Table B.9-1.

pollutants from the project, because it would be a major Prevention of Significant Deterioration (PSD) source. ,⁸⁷

64. Table 4 of Appendix B of the EA lists present and reasonably foreseeable projects or actions that occur within the regions of influence for forested lands and air quality, including, as appropriate, previous projects on Tennessee's 300 Line. In total, 18 other projects and development activities were identified in the regions of influence, including projects jurisdictional to the Commission, non-jurisdictional projects, and natural gas development activities. Actions located outside of the defined regions of influence do not have a potential to contribute cumulatively to the impact of the project before us because of their distance from the project. The Triad Expansion and Orion Projects were identified in the cumulative impact analysis for the Susquehanna West Project EA as potential future projects. However, as the EA states, because the Triad Expansion and Orion Projects would be outside the geographic area within which construction and operation of the Susquehanna West Project will have resource impacts, there would be no cumulative impacts occasioned by those projects. .⁸⁸

65. The Conservation Group cites *Natural Resources Defense Council v. Hodel* to bolster its claim that the Commission is required to consider the "inter-regional" cumulative impacts of Marcellus and Utica shale development activities.⁸⁹ The Conservation Group also maintains that recent research identifies the "substantial impact" that shale gas drilling will have throughout the Marcellus and Utica shale formations, and that the Commission must take a hard look at these impacts on a much broader scale.⁹⁰ The Conservation Group asserts that because speculation is implicit in NEPA, the Commission must forecast reasonably foreseeable future actions even if they are not specific proposals.⁹¹

⁸⁷ EA at 69.

⁸⁸ EA at 66.

⁸⁹ Conservation Group's April 18, 2016 Comments at 65 (citing *Nat. Res. Def. Council v. Hodel*, 865 F.2d 288, 299 (D.C. Cir. 1988)).

⁹⁰ *Id.* at 33 (citing M.C. Brittingham, et. al., *Ecological Risks of Shale Oil and Gas Development to Wildlife, Aquatic Resources, and Their Habitats*, 48 ENVTL. SCIENCE & TECHNOLOGY 11034, 11035-37 (Oct. 7, 2014) (published online on Sept. 4, 2014)).

⁹¹ *Id.* at 70.

66. Because the impacts associated with the Susquehanna West Project would be localized, the EA concluded that the potential for cumulative impacts would be localized as well. Commission staff identified the appropriate “region of influence” for considering cumulative effects, and properly excluded from its cumulative impacts analysis the impacts from shale gas drilling in the Marcellus and Utica shale formations. Given the large geographic scope of the Marcellus and Utica shale, the magnitude of the type of analysis requested by the Conservation Group – of the impacts of gas drilling in the Marcellus and Utica shale formations – bears no relationship to the limited magnitude of Tennessee’s Susquehanna West Project, which involves temporary construction impacts on 204.4 acres and permanent impacts on 62.0 acres of land, 21.9 acres of which would be new right-of-way. Moreover, even if the Commission were to vastly expand the geographic scope of the cumulative effects analysis, the impacts from such development are not reasonably foreseeable.

67. In our view, the Conservation Group’s arguments regarding the geographic scope of our cumulative impacts analysis are based on their erroneous claim, discussed below, that the Commission must conduct a regional programmatic NEPA review of natural gas development and production in the Marcellus and Utica shale formations, an area that covers potentially thousands of square miles. We decline to do so. As the Commission has previously explained, there is no Commission program or policy to promote additional natural gas development and production in shale formations.

68. We also disagree with the Conservation Group’s argument that the Commission’s use of regions of influence is inconsistent with CEQ regulations. Our cumulative impacts analysis considered the additive impact of a proposed action’s direct and indirect effects with other past, present, or reasonably foreseeable actions that have impacts occurring in the same region, and within the same time span, *as the impacts of the proposed action*. We believe this is consistent with the CEQ’s Guidance and case law.⁹² There is a geographic limit to the scope of a cumulative impacts analysis. Courts have held that a meaningful cumulative impacts analysis must identify five things: “(1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected *in that area* from the proposed project; (3) other actions-past, present, and proposed, and reasonably foreseeable-that have had or are expected to have impacts *in the same area*;

⁹² See 1997 CEQ Guidance at 15; see also e.g. *Sierra Club v. FERC*, No. 14-1275, slip op. at 21 (FERC must identify the relevant geographic area for the cumulative impacts analysis; i.e., the “area in which the effects of the proposed project will be felt”) (quoting *TOMAC, Taxpayers of Michigan Against Casinos v. Norton*, 433 F.3d. 852, 864 (D.C. Cir. 2006)).

(4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.”⁹³

69. The Conservation Group’s reliance on *Hodel* is unavailing. The Conservation Group interprets this case to mean that the Commission must consider the reasonably foreseeable impacts of shale gas extraction at a broader scale. We disagree. In *Hodel* the court considered the U.S. Department of the Interior’s EIS conducted in conjunction with its plan to award five-year leases for hydrocarbon exploration and production on multiple offshore blocks. The court found that the EIS focused primarily on assessing impacts associated with the region proximate to each lease block, and thereby failed to capture potential inter-regional cumulative impacts on migratory species if exploration and production were to take place simultaneously on several lease blocks within the migratory range of a species. However, *Hodel* considered a plan for resource-development leasing over a vast geographic area (including the North Atlantic, North Aleutian Basin, Straits of Florida, Eastern Gulf of Mexico, and waters off California, Oregon, and Washington).

70. In contrast, the “plan” before us involves the construction of 8.1 miles of pipeline loop within or immediately adjacent to existing rights-of-way and construction within the previously disturbed boundaries of three existing compressor stations. Because we find the proposal will have no reasonably foreseeable impacts on shale development, we find no reason to adopt a region of influence for reviewing cumulative impacts that would include the Marcellus and Utica shale formations. The Department of Interior’s leasing of large tracts in federal waters in *Hodel* is dissimilar from the Commission’s case-by-case review of individual and independent infrastructure projects. Whereas mineral leases, especially those that cover extensive and contiguous areas, establish the location and time frame for future development, the Commission does not permit, and indeed has no jurisdiction over, activities upstream of the point of interconnection with an interstate pipeline, e.g., leasing, exploration, production, processing, and gathering. To the extent the court in *Hodel* was persuaded by an earlier Supreme Court statement that under NEPA “proposals for . . . related actions that will have cumulative or synergistic environmental impact upon a region *concurrently pending before an agency* must be considered together,”⁹⁴ production and gathering activities in the Appalachian shale areas are not related actions concurrently pending before the Commission. Thus, there is no way to relate any specific production and gathering activities to this project.

⁹³ *TOMAC*, 433 F.3d at 864 (emphasis added) (quoting *Grand Canyon Trust v. FAA*, 290 F.3d 339, 345 (D.C. Cir. 2002)).

⁹⁴ 865 F.2d 288 at 297 (citing *Kleppe*, 427 U.S. at 410) (emphasis added).

71. The Conservation Group argues that by excluding consideration of the potential impacts of the Triad Expansion and Orion Projects, the EA's cumulative impacts analysis was "unreasonably restrictive" in its geographic scope. We disagree. While generally expressed in units of distance (e.g., miles), the geographic expanse of regions of influence are reflective of the natures of the action under consideration and the resource impacted. While potential impacts on some resources, air and noise frequently among them, spread farther afield from the site of natural gas infrastructure construction, no impacts from this project are expected to be experienced at so great a distance as to have an effect cumulatively with impacts from the Triad Expansion and Orion Projects.

72. As stated in the EA, there were nine natural gas wells identified within the 0.5-mile region of influence for activities at Compressor Station 317.⁹⁵ The EA considered the cumulative impacts clearing and construction activities associated with natural gas well development could have on forested lands.⁹⁶ However, the EA stated that compliance with the applicable federal and Pennsylvania Department of Environmental Protection (PADEP) air quality regulations would sufficiently avoid or minimize significant cumulative construction-related air quality impacts of natural gas development activities in the proposed project area to render further evaluation as part of our air quality cumulative assessment unwarranted.⁹⁷

73. The EA concludes that nearly all of the project-related impacts would be contained within or adjacent to the temporary construction right-of-way and additional temporary workspaces. The EA explains that by implementing the recommended mitigation measures (which have been adopted as conditions of this order), in combination with measures proposed or required by state and local agencies with overlapping or complementary jurisdiction, the cumulative impacts associated with the proposed action would be minimized below a significant level. We find that the EA appropriately evaluates the potential cumulative impacts associated with the project and other past, present, and reasonably foreseeable future projects, including the Triad Expansion and Orion projects, and agree with its conclusions.

3. Direct Effects on Waterbodies and Wetlands

74. The Conservation Group claims that the EA fails to take a "hard look" at the project's direct effect on waterbodies and wetlands. The Conservation Group questions Tennessee's ability to engage in pipeline construction activities without significant

⁹⁵ EA at 64 and Table 4 of Appendix B.

⁹⁶ EA at 66-68.

⁹⁷ EA at 66 and 69.

harm to waterbodies within the Pine Creek watershed. Specifically, the Conservation Group points to Tennessee's 300 Line Project, where it violated state clean water laws even though the Commission's EA had previously determined that the company's environmental construction plan and assurances made in the application would protect the environment during and following construction. Here, the Conservation Group raises concerns about whether the construction mitigation measures will adequately protect the water resources.

75. The Susquehanna West Project will cross a total of nine waterbodies using a dry crossing method.⁹⁸ One additional waterbody flows under an access road through an existing culvert and will not be affected. No waterbodies will be affected by the construction of any aboveground facilities. The potential direct and indirect effects associated with the waterbody crossing are appropriately considered in the EA.

76. The Conservation Group also specifically takes issue with the EA's conclusion that the project will result in no significant impacts on wetlands, arguing that the existing right-of-way already impacts "Wetland 10," and construction of the new pipeline will further impact "Wetland 10," as well as "Wetland 19" (Bear Wallow Branch, an Exceptional Value waterbody), which was not previously impacted.

77. The EA discusses Tennessee's project-specific *Wetland and Waterbody Construction Mitigation Procedures*, which specifies mitigation measures to minimize impacts on waterbodies and wetlands from project construction and operation. Construction and operation-related impacts on waterbodies and wetlands will be further mitigated by Tennessee's compliance with the conditions of its Clean Water Act permits. Tennessee submitted a Joint Permit Application to the U.S. Army Corps of Engineers (USACE) and PADEP for authorization of waterbody and wetland crossings under Sections 401 and 404 of the Clean Water Act and 25 PA Code Chapter 105. As part of the permit review process, the Pennsylvania Fish and Boat Commission (PAFBC) will provide comments on the permit application to ensure appropriate protection of aquatic resources, and Tennessee has stated it will comply with PAFBC-recommended instream work timing restrictions for Exceptional Value waterbodies, Reproducing Wild Trout Streams, and Class A Wild Trout Streams. Because final

⁹⁸ A dry-ditch crossing method consists of either a flume crossing or a dam-and-pump crossing, and under this method, the streambeds would be returned to their preconstruction conditions in accordance with Tennessee's site-specific Plan and Procedures and applicable permit conditions. EA at 8-9; *see also* EA at 5, noting that Tennessee will follow project-specific Plan and Procedures, which include the construction procedures and mitigation measures contained in the Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan and Procedures* and three alternate measures.

Section 404 and Chapter 105 permits have not yet been issued for the Susquehanna West Project, Environmental Condition No. 11 of this order requires Tennessee to file a copy of the final Chapter 105 Permit for the project documenting the instream work windows and any other construction restrictions or mitigation measures required by the USACE and PADEP. In addition, Tennessee will obtain a National Pollution Discharge Elimination System permit for Stormwater Discharges Associated with Construction Activities. Commission staff will inspect the project during construction and restoration to ensure that wetlands and waterbodies are properly restored to pre-construction conditions. Tennessee is required to monitor and record the success of wetland revegetation annually until wetland revegetation is successful. Finally, Tennessee is required to file a report within three years after construction documenting the success of wetland restoration and, if necessary, develop a remedial revegetation plan in consultation with a professional ecologist to actively revegetate impacted wetlands.

78. We find that the EA adequately discloses direct and indirect impacts on waterbodies and wetlands associated with project construction and operation. With respect to the concerns raised by the Conservation Group regarding the problems encountered with the Line 300 Project, the fact that issues arose during the construction of that project is not indicative of a generic weakness in our general mitigation requirements. We further note that the Line 300 Project involved the construction of 127 miles of new pipeline (as opposed to 8.1 miles being constructed here), potentially impacting 79 perennial waterbodies and 78 intermittent waterbodies, 331 wetlands, and 2 vernal pools (as opposed to the Susquehanna West Project's potential impacts on 2 perennial, 4 intermittent, and 3 ephemeral waterbodies and 13 wetlands).⁹⁹ We agree with the conclusion in the EA that the Plan and Procedures' conditions will avoid any significant direct effects to the waterbodies. Based on the avoidance and minimization measures discussed in the EA, together with the Environmental Conditions included in Appendix B of this order, we agree with the EA's conclusions that impacts will be minor and temporary.

4. Indirect Impacts of Shale Gas Development

79. The Conservation Group asserts that the EA fails to consider the indirect effects of shale gas development that is both casually related to and a reasonably foreseeable consequence of the Susquehanna West Project.

⁹⁹ See 300 Line Project EA, at 1-2, 1-28, 2-12, 2-25, 2-26, Docket No. CP09-444-000 (issued February 25, 2010) and Susquehanna West Project EA at 20 and 23.

80. The CEQ regulations direct federal agencies to examine the direct, indirect, and cumulative impacts of proposed actions.¹⁰⁰ Indirect impacts are defined as those “which are caused by the action and are later in time or farther removed in distance [than direct impacts], but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.”¹⁰¹ Accordingly, to determine whether an impact should be studied as an indirect impact, the Commission must determine whether it: (1) is caused by the proposed action; and (2) is reasonably foreseeable.

81. With respect to causation, “NEPA requires ‘a reasonably close causal relationship’ between the environmental effect and the alleged cause”¹⁰² in order “to make an agency responsible for a particular effect under NEPA.”¹⁰³ As the Supreme Court explained, “a ‘but for’ causal relationship is insufficient [to establish cause for purposes of NEPA].”¹⁰⁴ Thus, “[s]ome effects that are ‘caused by’ a change in the physical environment in the sense of ‘but for’ causation,” will not fall within NEPA if the causal chain is too attenuated.¹⁰⁵ Further, the Court has stated that “where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant ‘cause’ of the effect.”¹⁰⁶

82. An effect is “reasonably foreseeable” if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”¹⁰⁷ NEPA requires “reasonable forecasting,” but an agency is not required “to engage in speculative

¹⁰⁰ 40 C.F.R. § 1508.25(c) (2016).

¹⁰¹ *Id.* § 1508.8(b).

¹⁰² *U.S. Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752 at 767 (2004) (quoting *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983)).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Metro. Edison Co.*, 460 U.S. at 774.

¹⁰⁶ *Pub. Citizen*, 541 U.S. at 770.

¹⁰⁷ *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992). *See also City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005).

analysis” or “to do the impractical, if not enough information is available to permit meaningful consideration.”¹⁰⁸

83. The Commission does not have jurisdiction over natural gas production. The potential impacts of natural gas production, with the exception of greenhouse gases and climate change, are localized. Each locale includes unique conditions and environmental resources. Production activities are thus regulated at a state and local level. PADEP, for example, has developed best management practices for the construction and operation of upstream oil and gas production facilities in Pennsylvania. PADEP and the Susquehanna River Basin Commission have also enacted regulations to specifically protect water resources from potential impacts associated with the development of the Marcellus Shale region. In addition, deep underground injection and disposal of wastewaters and liquids are subject to regulation by the EPA under the Safe Drinking Water Act. The EPA also regulates air emissions under the Clean Air Act. On public lands, federal agencies are responsible for the enforcement of regulations that apply to natural gas wells.

84. As we have previously concluded in natural gas infrastructure proceedings, the environmental effects resulting from natural gas production are generally neither sufficiently causally related to specific natural gas infrastructure projects nor are the potential impacts from gas production reasonably foreseeable such that the Commission could undertake a meaningful analysis.¹⁰⁹ A causal relationship sufficient to warrant Commission analysis of the non-pipeline activity as an indirect impact would only exist if a proposed pipeline would transport new production from a specified production area and that production would not occur in the absence of the proposed pipeline (i.e., there will be no other way to move the gas).¹¹⁰ To date, the Commission has not been presented with a

¹⁰⁸ *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011).

¹⁰⁹ See, e.g., *Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121, at PP 81-101 (2011), *order on reh'g*, 138 FERC ¶ 61,104, at PP 33-49 (2012), *petition for review dismissed sub nom. Coal. for Responsible Growth v. FERC*, 485 Fed. Appx. 472, 474-75 (2012) (unpublished opinion).

¹¹⁰ See *cf. Sylvester v. U.S. Army Corps of Eng'rs*, 884 F.2d 394, 400 (9th Cir. 1989) (upholding the environmental review of a golf course that excluded the impacts of an adjoining resort complex project). See also *Morongo Band of Mission Indians v. FAA*, 161 F.3d 569, 580 (9th Cir. 1998) (concluding that increased air traffic resulting from airport plan was not an indirect, “growth-inducing” impact); *City of Carmel-by-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1162 (9th Cir. 1997) (acknowledging that existing development led to planned freeway, rather than the reverse, notwithstanding the project's potential to induce additional development).

proposed pipeline project that the record shows will cause the predictable development of gas reserves. Though the Conservation Group disagrees with our position, we continue to believe that the opposite causal relationship is in fact more likely, i.e., once production begins in an area, shippers or end users will support the development of a pipeline to move the produced gas. We continue to maintain that it would make little economic sense to undertake construction of a pipeline in the hope that production might later be determined to be economically feasible and that the producers will choose the previously constructed pipeline as best suited for moving their gas to market.

85. Even accepting, *arguendo*, that a specific pipeline project will induce incremental natural gas production, the Conservation Group is incorrect in its assertion that the Commission has found such *production* to be unforeseeable.¹¹¹ Rather, the Commission has found that the potential environmental *impacts* resulting from such production are not reasonably foreseeable. As we have explained, the Commission generally does not have sufficient information to determine the origin of the gas that will be transported on a pipeline. It is the states, rather than the Commission, that have jurisdiction over the production of natural gas and thus would be most likely to have specific information regarding future production. We are aware of no forecasts by states, in particular Pennsylvania where the project is located, making it impossible for the Commission to meaningfully predict production-related impacts, many of which are highly localized. Thus, even if the Commission knows the general source area of gas likely to be transported on a given pipeline, a meaningful analysis of production impacts would require more detailed information regarding the number, location, and timing of wells, roads, gathering lines, and other appurtenant facilities, as well as details about production methods, which can vary per producer and depending on the applicable regulations in the various states. Accordingly, the impacts of natural gas production are not reasonably foreseeable because we “cannot forecast [their] likely effects” in the context of an environmental analysis for a specific proposed interstate natural gas pipeline project.¹¹²

86. Nonetheless, we note that, although not required by NEPA, a number of federal agencies have generally examined the potential environmental issues associated with unconventional natural gas production in order to provide the public with a more complete understanding of the potential impacts. The U.S. Department of Energy has concluded that such production, when conforming to regulatory requirements, implementing best management practices, and administering pollution prevention

¹¹¹ Conservation Group April 18, 2016 Comments at 29.

¹¹² *Habitat Educ. Ctr.*, 609 F.3d 897, 902 (7th Cir. 2010) (agency need not discuss projects too speculative for meaningful discussion).

concepts, may have temporary, minor impacts on water resources.¹¹³ The EPA has reached a similar conclusion.¹¹⁴ With respect to air quality, the U.S. Department of Energy found that natural gas development leads to both short- and long-term increases in local and regional air emissions.¹¹⁵ It also found that such emissions may contribute to climate change.¹¹⁶ But to the extent that natural gas production replaces the use of other carbon-based energy sources, the U.S. Department of Energy found that there may be a net positive impact in terms of climate change.¹¹⁷

i. Causation

87. The Conservation Group alleges that the Commission's environmental analysis of the Susquehanna West Project violated NEPA by failing to consider the indirect effects of natural gas production in Marcellus shale region.¹¹⁸ It questions how the Susquehanna West Project can "serve . . . the northeast Marcellus" as stated by Tennessee's parent company, Kinder Morgan, if there is not "a close causal relationship between the two."¹¹⁹

88. The Conservation Group alleges that, by ignoring induced upstream natural gas production, Commission staff used "tunnel vision" to look only at direct impacts, rather than indirect impacts, like the unlawful NEPA analysis by the USACE in *Colorado River*

¹¹³ U.S. Department of Energy, *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From The United States* (Aug. 2014) (DOE Addendum), <http://energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf>.

¹¹⁴ See U.S. EPA, *Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources*, at ES-6 (June 2015) (external review draft), http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=523539 (finding the number of identified instances of impacts on drinking water resources to be small compared to the number of hydraulically fractured wells). See also *Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands*, 80 Fed. Reg. 16,128, 16,130 (Mar. 26, 2015) (U.S. Bureau of Land Management promulgated regulations for hydraulic fracturing on federal and Indian lands to "provide significant benefits to all Americans by avoiding potential damages to water quality, the environment, and public health").

¹¹⁵ DOE Addendum at 32.

¹¹⁶ *Id.* at 44.

¹¹⁷ *Id.*

¹¹⁸ Conservation Group April 18, 2016 Comments at 24-33.

¹¹⁹ *Id.* at 26.

Indian Tribes v. Marsh (Central District of California 1985), which ignored that a stabilization project on a riverbank was a prerequisite for real estate development adjacent to the river.¹²⁰

89. The record in this proceeding does not demonstrate the requisite reasonably close causal relationship between the impacts of future natural gas production and the Susquehanna West Project that would necessitate further analysis.¹²¹ The fact that natural gas production and transportation facilities are all components of the general supply chain required to bring domestic natural gas to market is not in dispute. This does not mean, however, that the Commission's approval of this particular infrastructure project will cause or induce the effect of additional or further shale gas production. The Susquehanna West Project is responding to the need for transportation, not creating it.¹²²

90. Here, the Conservation Group, like the environmental groups in *Central New York Oil and Gas Co., LLC* case,¹²³ seeks review of impacts (induced production of natural gas from the Marcellus Shale gas play) that are not "caused by" the construction and operation of the Susquehanna West Project. In *Central New York Oil and Gas Co., LLC*, the Commission authorized construction and operation of a 39-mile-long pipeline traversing Northeast Pennsylvania, which was intended, in part, to "provide access to interstate markets for natural gas produced from the Marcellus [s]hale in northeast Pennsylvania"¹²⁴ In that case, environmental groups, before the Commission and the Second Circuit, argued that the pipeline would "serve[] as a 'catalyst' for Marcellus shale development in the Bradford, Lycoming and Sullivan Counties crossed by the pipeline, and would 'facilitate the development of Marcellus [s]hale.'"¹²⁵ The Commission determined, and the court agreed, that the Commission need not consider the

¹²⁰ *Colorado River Indian Tribes v. Marsh*, 605 F. Supp 1425 (C.D. Cal. 1985).

¹²¹ See *Coal. for Responsible Growth & Res. Conservation v. FERC*, 485 F. App'x 472, 474 (2d Cir. 2012) (unpublished opinion) (rejecting argument that the pipeline project authorized by FERC would serve as a catalyst for Marcellus shale development in the Pennsylvania counties crossed by the pipeline).

¹²² Tennessee's April 2, 2015 Application at 3.

¹²³ *Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121 (2011), *order on reh'g*, 138 FERC ¶ 61,104 (2012), *pet. for review dismissed sub nom. Coal. for Responsible Growth v. FERC*, 485 Fed. App'x 472 (2d Cir. 2012).

¹²⁴ *Central New York Oil & Gas Co., LLC*, 138 FERC ¶ 61,104 at P 5.

¹²⁵ *Central New York Oil & Gas Co., LLC*, 137 FERC ¶ 61,121 at P 81.

environmental impacts of production from the Marcellus shale region when authorizing a pipeline project that would connect an interstate gas pipeline to a specific Marcellus shale gas production region.¹²⁶

91. In *Central New York Oil and Gas Co., LLC*, the Commission examined the purpose of the pipeline project, and found that Marcellus shale development activities are not “an essential predicate” for the project because “it is not merely a gathering system for delivery” of Marcellus shale gas.¹²⁷ Rather, that new pipeline created a hub line that enabled gas to flow onto three major interstate pipeline systems.¹²⁸ Thus, the Commission concluded, and the Second Circuit agreed, that under NEPA, Marcellus shale development activities are not sufficiently causally-related to the project to warrant in-depth consideration of the gas production impacts.¹²⁹

92. Similarly here, a network of transmission facilities already exists through which gas produced in the Marcellus shale region may flow to local users or into the interstate pipeline system. Moreover, the Susquehanna West Project, unlike the *Central New York Oil & Gas Co., LLC*, pipeline, is not a new transportation path for moving gas from the production area to market. Rather, the Susquehanna West Project creates incremental transportation capacity on a portion of Tennessee’s existing system.¹³⁰ Thus, here, any link between the Susquehanna West Project and Marcellus shale gas production is more attenuated than the *Central New York Oil & Gas Co., LLC*, case.

93. For an agency to include consideration of an impact in its NEPA analysis as an indirect effect, approval of the proposed project and the related secondary effect must be causally related, i.e., the agency action and the effect must be “two links of a single

¹²⁶ See *Central New York Oil & Gas Co.*, 137 FERC ¶ 61,121 at P 37 (finding no causal connection between pipeline and shale gas production in part “because the Commission plays no role in, nor retains any control over,” well development), *on reh’g*, 138 FERC ¶ 61,104 (2012), *aff’d*, *Coal. for Responsible Growth & Res. Conservation v. FERC*, 485 F. App’x 472, 474 (2d Cir. 2012).

¹²⁷ *Central New York Oil & Gas Co., LLC*, 137 FERC ¶ 61,121 at P 91.

¹²⁸ *Id.*

¹²⁹ *Central New York Oil & Gas Co.*, 138 FERC ¶ 61,104 at P 84; *Coal. for Responsible Growth*, 485 F. App’x at 474 (“FERC reasonably concluded that the impacts of that [shale gas] development are not sufficiently causally-related to the project to warrant a more in-depth [NEPA] analysis”).

¹³⁰ See Application at 3-4.

chain.”¹³¹ However, the fact that natural gas production and transportation facilities are all components of the general supply chain required to bring domestic natural gas to market does not mean that the Commission’s approval of this particular pipeline project will cause or induce the effect of additional or further shale gas production. The purpose of the proposed project is to meet market demand for the transportation of natural gas supplies, and economic activity that is already taking place. Pennsylvania forecasted approximately 7.5 billion cubic feet per day (bcf/d) of natural gas production by 2015 and 13.4 bcf/d by 2020,¹³² unrelated to the development of this project. The proposed project is a result of, rather than a precursor to, production development in this region.

94. Moreover, as we have explained in other proceedings, a number of factors, such as domestic natural gas prices and production costs, drive new drilling.¹³³ If the Susquehanna West Project were not constructed, it is reasonable to assume that any new production spurred by such factors would reach intended markets through alternate pipelines or other modes of transportation.¹³⁴ Again, any such production would take place pursuant to the regulatory authority of state and local governments.¹³⁵

¹³¹ *Sylvester v U.S. Army Corps of Engineers*, 884 F.2d 394 (9th Cir. 1980).

¹³² *Governor’s Marcellus Shale Advisory Commission Report. 2011. Commonwealth of Pennsylvania. Office of Lieutenant Governor, Harrisburg, Pennsylvania.*

¹³³ *Rockies Express Pipeline LLC*, 150 FERC ¶ 61,161, at P 39 (2015) (*Rockies Express*). See also *Sierra Club v. FERC*, No. 14-1249, slip op. at 14 (finding that FERC adequately explained why it was not reasonably foreseeable that its authorization of greater capacity at an LNG export terminal would induce additional domestic natural gas production); *Sierra Club v. Clinton*, 746 F. Supp. 2d 1025, 1045 (D. Minn. 2010) (holding that the U.S. Department of State, in its environmental analysis for an oil pipeline permit, properly decided not to assess the transboundary impacts associated with oil production because, among other things, oil production is driven by oil prices, concerns surrounding the global supply of oil, market potential, and cost of production); *Florida Wildlife Fed’n v. Goldschmidt*, 506 F. Supp. 350, 375 (S.D. Fla. 1981) (ruling that an agency properly considered indirect impacts when market demand, not a highway, would induce development).

¹³⁴ *Rockies Express*, 150 FERC ¶ 61,161 at P 39.

¹³⁵ See *N.J. Dep’t of Env’tl. Prot. v. NRC*, 561 F.3d 132, 139 (3d Cir. 2009) (NEPA does not require consideration of foreseeable effects that are not potentially subject to the control of the federal agency doing the evaluation).

95. The case the Conservation Group relies upon, *Colorado River*, is inapposite. At issue in *Colorado River* was the scope of the USACE's environmental review for a permit for a developer to place riprap¹³⁶ to stabilize a portion of the shoreline along the Colorado River.¹³⁷ The riprap was an integral and necessary part of the developer's proposed 156-acre residential and commercial development project, which included 447 single-family homes, mobile homes, and commercial facilities along the Colorado River.¹³⁸ The Court determined that the USACE – the agency responsible for issuing a permit for the riprap – violated NEPA by limiting its review to the physical impacts from the developer's construction of the riprap and failing to consider the impacts of the developer's larger residential and commercial development that was dependent on the installation of the riprap.¹³⁹ *Colorado River* highlights the close causal relationship necessary to mandate consideration of indirect impacts – a causal link that is absent here.

ii. Reasonable Foreseeability

96. The Conservation Group contends that natural gas production in the Marcellus and Utica shale formations is reasonably foreseeable, and that because speculation is implicit in NEPA, there is no need to know the precise location, scale, scope, and timing of shale gas drilling.¹⁴⁰ Rather, it maintains that there is adequate information available to “engage in reasonable forecasting,”¹⁴¹ and cites a report by a research investment firm stating that various companies have identified “between 10 and 30 years of drilling locations across the Marcellus [production region].”¹⁴²

¹³⁶ Riprap is large boulders placed along shorebanks to stabilize the banks and prevent erosion.

¹³⁷ *Colorado River*, 605 F. Supp. at 1432-34.

¹³⁸ *Id.* at 1428.

¹³⁹ *Id.* at 1433. (USACE violated NEPA by failing to consider the indirect and cumulative impacts of the residential and commercial development where it was “reasonably foreseeable that the placement of the ripraps was just a stepping stone to major development in the area).

¹⁴⁰ Conservation Group April 18, 2016 Comments at 30.

¹⁴¹ *Id.* at 31.

¹⁴² *Id.* (citing Morningstar Energy Observer, *Shale Shock: How the Marcellus Shale Transformed the Domestic Natural Gas Landscape and What It Means for Supply in the Years Ahead*, p. 17 (Feb. 2014)).

97. We disagree. Even if a causal relationship between the Susquehanna West Project and additional production were presumed, the scope of the impacts from any such induced production is not reasonably foreseeable. Even knowing the identity of a producer of gas to be shipped on a pipeline, and the general area where that producer's existing wells are located, does not alter the fact that the number and location of any additional wells are matters of speculation. As we have explained in several other proceedings, factors such as market prices and production costs, among others, drive new drilling.¹⁴³ These factors, combined with the immense size of the Marcellus and Utica Shale formations and the highly localized impacts of production make any forecasting, by a state or federal agency, inherently speculative and impractical. A broad analysis, based on generalized assumptions rather than reasonably specific information of this type, will not meaningfully assist the Commission in its decision making, e.g., evaluating potential alternatives.¹⁴⁴ While *Northern Plains Resource Council v. Surface Transportation Board* states that speculation is implicit in NEPA, it also states that agencies are not required “to do the impractical, if not enough information is available to permit meaningful consideration.”¹⁴⁵

98. In support of its position, the Conservation Group relies upon *Delaware Riverkeeper v. FERC*,¹⁴⁶ in which the D.C. Circuit found that the Commission attempted to “‘shirk’ its responsibility under NEPA by labeling any and all discussion of future

¹⁴³ *Rockies Express*, 150 FERC ¶ 61,161, at P 39 (2015). See also *Sierra Club v. Clinton*, 746 F. Supp. 2d 1025, 1045 (D. Minn. 2010) (holding that the U.S. Department of State, in its environmental analysis for an oil pipeline permit, properly decided not to assess the transboundary impacts associated with oil production because, among other things, oil production is driven by oil prices, concerns surrounding the global supply of oil, market potential, and cost of production); *Florida Wildlife Fed'n v. Goldschmidt*, 506 F. Supp. 350, 375 (S.D. Fla. 1981) (ruling that an agency properly considered indirect impacts when market demand, not a highway, would induce development).

¹⁴⁴ See, e.g., *Habitat Educ. Ctr. v. U.S. Forest Serv.*, 609 F.3d 897 (7th Cir. 2010) (holding that an agency does not fail to give a project a “hard look” for purposes of NEPA simply because it omits from discussion a future project so speculative that it can say nothing meaningful about its cumulative effects).

¹⁴⁵ *Northern Plains Resource Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (citing *Env'tl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 451 F.3d 1005, 1014 (9th Cir. 2006)). See also *The Fund for Animals v. Kempthorne*, 538 F.3d 124, 137 (2d. Cir. 2008) (speculation in an EIS is not precluded, but the agency is not obliged to engage in endless hypothesizing as to remote possibilities).

¹⁴⁶ 753 F.3d 1304 (D.C. Cir. 2014) (*Delaware River Keper*).

environmental effects as ‘crystal ball inquiry.’”¹⁴⁷ The Conservation Group also cites *Mid States Coalition for Progress v. Surface Transportation Board*,¹⁴⁸ in which the Eighth Circuit Court of Appeals stated that, “when the nature of the effect is reasonably foreseeable but its extent is not, [an] agency may not simply ignore the effect.”¹⁴⁹

99. Similarly, the Conservation Group’s reliance on *Mid States* is unavailing. In that case, the agency acknowledged that a particular outcome (increased usage of 100 million tons of coal at coal burning electric generation plants resulting from the availability of cheaper coal after the new rail lines were built) was reasonably foreseeable, but then failed to consider its impact.¹⁵⁰ In particular, the court in *Mid States* faulted the agency for failing to consider the environmental effects of the known increase in coal usage where the agency had already identified the nature of the ensuing environmental effects.¹⁵¹ Here, as discussed above, neither the nature *nor* the extent of the effect is reasonably foreseeable. Specifically, there is no record evidence that the Susquehanna West Project will induce incremental production of natural gas and, even if additional gas is induced, the amount, timing, and location of such development activity is speculative.¹⁵² Thus, unlike the agency in *Mid States*, here we are not “simply ignor[ing]” the impacts of future gas development; rather, there are no identified “specific and causally linear indirect consequences that could reasonably be foreseen and factored into the Commission’s environmental analysis.”¹⁵³

¹⁴⁷ Conservation Group’s April 18, 2016 Comments at 30 (citing *Delaware Riverkeeper*, 753 F.3d at 1310).

¹⁴⁸ 345 F.3d 520 (8th Cir. 2003) (*Mid States*).

¹⁴⁹ *Id.* at 549.

¹⁵⁰ *Mid States*, 345 F.3d at 549-50; *see also Sierra Club v. FERC*, No. 14-1275, slip op. at 18 (finding that *Mid States* “looks nothing like” challenge that FERC failed to consider indirect impacts claimed increased natural gas production stemming FERC’s authorization of liquefied natural gas export facilities).

¹⁵¹ *Mid States*, 345 F.3d at 549.

¹⁵² *See generally Nat. Res. Def. Council, Inc. v. Callaway*, 524 F.2d 79, 90 (2d Cir. 1975) (holding that an agency need not “consider other projects so far removed in time or distance from its own that the interrelationship, if any, between them is unknown or speculative”).

¹⁵³ *Sierra Club v. FERC*, No. 14-1275, slip op. at 18.

100. In addition, the other case cited by the Conservation Groups, *Delaware Riverkeeper*, is inapposite. In that case, the Court faulted the Commission for segmenting its environmental review of four “contemporaneous” FERC-jurisdictional pipeline projects.¹⁵⁴ Reasonably foreseeability was not at issue.

5. Programmatic Environmental Impact Statement

101. CEQ regulations do not require broad or “programmatic” NEPA reviews. CEQ has stated, however, that such a review may be appropriate where an agency: (1) is adopting official policy; (2) is adopting a formal plan; (3) is adopting an agency program; or (4) is proceeding with multiple projects that are temporally and spatially connected.¹⁵⁵ The Supreme Court has held that a NEPA review covering an entire region (that is, a programmatic review) is required only “if there has been a report or recommendation on a proposal for major federal action” with respect to this region,¹⁵⁶ and the courts have concluded that there is no requirement for a programmatic EIS where the agency cannot identify the projects that may be sited within a region because individual permit applications will be filed at a later time.¹⁵⁷

102. We have explained that there is no Commission plan, policy, or program for the development of natural gas infrastructure.¹⁵⁸ Rather, the Commission acts on individual applications filed by entities proposing to construct interstate natural gas pipelines. Under NGA section 7, the Commission is obligated to authorize a project if it finds that the construction and operation of the proposed facilities “is or will be required by the present or future public convenience and necessity.”¹⁵⁹ What is required by NEPA, and

¹⁵⁴ *Delaware Riverkeeper Network*, 753 F.3d at 1318 (emphasizing the importance the Court placed on the overlapping timing of the four projects).

¹⁵⁵ See Memorandum from CEQ to Heads of Federal Departments and Agencies, *Effective Use of Programmatic NEPA Reviews* at 13-15 (Dec. 18, 2014) (citing 40 C.F.R. § 1508.18(b) (2016)) (CEQ 2014 Programmatic Guidance).

¹⁵⁶ *Kleppe*, 427 U.S. 390 (holding that a broad-based environmental document is not required regarding decisions by federal agencies to allow future private activity within a region).

¹⁵⁷ See *Piedmont Env'tl. Council v. FERC*, 558 F.3d 304, 316-317 (4th Cir. 2009) (*Piedmont*).

¹⁵⁸ See, e.g., *National Fuel Gas Supply Corp.*, 154 FERC ¶ 61,180, at P 13 (2016); *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,259, at PP 38-47 (2014).

¹⁵⁹ 15 U.S.C. § 717f(e) (2012).

what the Commission provides, is a thorough examination of the potential impacts of specific projects. In the circumstances of the Commission's actions, a broad, regional analysis would "be little more than a study ... concerning estimates of potential development and attendant environmental consequences,"¹⁶⁰ which would not present "a credible forward look and would therefore not be a useful tool for basic program planning."¹⁶¹ As to projects that have a clear physical, functional, and temporal nexus such that they are connected or cumulative actions,¹⁶² the Commission will prepare a multi-project environmental document.¹⁶³

103. The Conservation Group contends that the Commission violated NEPA by failing to prepare a programmatic EIS for natural gas infrastructure projects related to natural gas development in the Appalachian Basin region.¹⁶⁴ The Conservation Group points to a number of gas infrastructure projects in various stages of planning in the Appalachian Basin, claiming that they will collectively "have cumulative or synergistic environmental impacts upon a region."¹⁶⁵

104. Further, the Conservation Group claims that even if future pipeline projects may be theoretical, this does not mean that the Commission would not be able to "establish parameters for subsequent analysis."¹⁶⁶ The Conservation Group claims that a programmatic EIS may aid the Commission's and the public's understandings of broadly foreseeable consequences of NGA-jurisdictional projects and non-jurisdictional shale gas production.

¹⁶⁰ *Kleppe v. Sierra Club*, 427 U.S. at 402.

¹⁶¹ *Piedmont*, 558 F.3d at 316.

¹⁶² 40 C.F.R. § 1508.25(a)(1)-(2) (2016) (defining connected and cumulative actions).

¹⁶³ See, e.g., EA for the Monroe to Cornwell Project and the Utica Access Project, Docket No. CP15-7-000 & CP15-87-000 (filed Aug. 19, 2015); Final Multi-Project Environmental Impact Statement for Hydropower Licenses: Susquehanna River Hydroelectric Projects, Project Nos. 1888-030, 2355-018, and 405-106 (filed Mar. 11, 2015).

¹⁶⁴ Conservation Group April 18, 2016 Comments at 68-73.

¹⁶⁵ *Id.* at 69-70 (citing *Kleppe*, 427 U.S. at 409-410).

¹⁶⁶ *Id.* at 70 (citing 2014 Programmatic Guidance at 11).

105. The Conservation Group also argues that CEQ's 2014 Programmatic Guidance recommends a programmatic EIS when "several energy development programs proposed in the same region of the country...[have] similar proposed methods of implementation and similar best practice and mitigation measures that can be analyzed in the same document."¹⁶⁷ In support, the Conservation Group points to a Programmatic EIS developed by the U.S. Department of Energy and U.S. Bureau of Land Management to consider the environmental impacts of solar energy development in six southwestern states, and urges the Commission to adopt a similar approach for natural gas development in the Appalachian Basin.¹⁶⁸

106. The Conservation Group has not shown that the Commission is engaged in regional planning. Rather, it simply points to the fact that there are a number of natural gas infrastructure projects in various stages of planning throughout the Appalachian Basin, and alleges that the Commission should use its "unique vantage point" to work with pipeline companies and the public to consider the effects of a number of projects in one programmatic EIS.¹⁶⁹

107. The mere fact that there currently are a number of planned, proposed, or approved infrastructure projects to increase capacity to transport natural gas throughout the Appalachian basin and elsewhere in the country does not establish that the Commission is engaged in regional development or planning.¹⁷⁰ Rather, this information confirms that pipeline projects to transport natural gas are initiated solely by a number of different companies in private industry. As we have noted previously, a programmatic EIS is not required to evaluate the regional development of a resource by private industry if the development is not part of, or responsive to, a federal plan or program in that region.¹⁷¹

¹⁶⁷ *Id.* (citing 2014 Programmatic Guidance at 11).

¹⁶⁸ *Id.* at 72.

¹⁶⁹ *Id.* at 71-72 (citing Gov. Tom Corbett's Aug. 19, 2014 Comments on the Atlantic Sunrise Project).

¹⁷⁰ See e.g., *Sierra Club v. FERC*, No. 14-1275, slip op. at 22 (D.C. Cir. June 28, 2016) (rejecting claim that NEPA requires FERC to undertake a nationwide analysis of all applications for liquefied natural gas export facilities); cf. *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, at 1326-27 (D.C. Cir. 2015) (upholding FERC determination that, although a Dominion Transmission Inc.-owned pipeline project's excess capacity may be used to move gas to the Cove Point terminal for export, the projects are "unrelated" for purposes of NEPA).

¹⁷¹ See, e.g., *Kleppe*, 427 U.S. at 401-02.

108. The Commission's siting decisions regarding pending and future natural gas pipeline facilities will be in response to proposals by private industry, and the Commission has no way to accurately predict the scale, timing, and location of projects, much less the type of facilities that will be proposed.¹⁷² In these circumstances, the Commission's longstanding practice to conduct an environmental review for each proposed project, or a number of proposed projects that are interdependent or otherwise interrelated or connected, "should facilitate, not impede, adequate environmental assessment."¹⁷³ Thus, here the Commission's environmental review of Tennessee's actual proposed project in a discrete EA is appropriate under NEPA.

109. In sum, CEQ states a programmatic EIS can "add value and efficiency to the decision-making process when they inform the scope of decisions," "facilitate decisions on agency actions that precede site- or project-specific decisions and actions," or "provide information and analyses that can be incorporated by reference in future NEPA reviews."¹⁷⁴ The Commission does not believe these benefits can be realized by a programmatic review of natural gas infrastructure projects because the projects subject to our jurisdiction do not share sufficient elements in common to narrow future alternatives or expedite the current detailed assessment of each particular project. Thus, we find a programmatic EIS is neither required nor useful under the circumstances here.

6. Compliance with Section 7 of the Endangered Species Act

110. The Conservation Group states that the Commission has a duty to ensure no jeopardy to listed species under Section 7(a)(2) of the Endangered Species Act and claims that the Commission and the U.S. Fish and Wildlife Service should enter into formal consultation for the northeastern bulrush and northern long-eared bat. Formal consultation is required if an action is likely to adversely affect listed species or its designated critical habitat. As detailed in the EA, Commission staff determined that the Susquehanna West Project may affect, but would not likely adversely affect, both the northeastern bulrush and the northern long-eared bat.¹⁷⁵ The U.S. Fish and Wildlife

¹⁷² Lack of jurisdiction over an action does not necessarily preclude an agency from considering the potential impacts. However, as explained in the cumulative impacts section of this order, it reinforces our finding that because states, and not the Commission, have jurisdiction over natural gas production and associated development (including siting and permitting), the location, scale, timing, and potential impacts from such development are even more speculative.

¹⁷³ *Id.*

¹⁷⁴ 2014 Programmatic Guidance at 13.

¹⁷⁵ EA at 31.

Service concurred with these determinations in its letter dated September 30, 2015. As such, consultation for these listed species is complete under the Endangered Species Act and no formal consultation is required. We concur.

7. Clarifications

111. Tennessee provides updates regarding two wetlands that were inadvertently excluded from table A.6-1 of the EA, which identifies wetlands that would be crossed by horizontal directional drill or conventional bore. Tennessee clarifies that section B.3.1 of the EA incorrectly states that Tennessee would cross wetlands containing northeastern bulrush via horizontal directional drill and that these wetlands would instead be crossed using a conventional bore. Finally, Tennessee clarifies several fishery designations for waterbodies crossed by the project. We have reviewed these minor clarifications and conclude they do not alter the EA's conclusions with respect to environmental impacts resulting from the project.

112. Based on the analysis in the EA, we conclude that if constructed and operated in accordance with Tennessee's application and supplements, and in compliance with the environmental conditions in Appendix B to this Order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

113. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹⁷⁶

114. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, and all comments submitted, and upon the consideration of the record,

¹⁷⁶ See 15 U.S.C. § 717r(d) (state or federal agency's failure to act on a permit considered to be inconsistent with Federal law); see also *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (state regulation that interferes with FERC's regulatory authority over the transportation of natural gas is preempted) and *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 245 (D.C. Cir. 2013) (noting that state and local regulation is preempted by the NGA to the extent it conflicts with federal regulation, or would delay the construction and operation of facilities approved by the Commission).

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Tennessee authorizing the construction of the Susquehanna West Project facilities, all as described and conditioned herein, and as more fully described in its application.

(B) The certificate authority issued in Ordering Paragraphs (A) is conditioned on the following:

(1) Tennessee's completing the authorized construction of the proposed facilities and making them available for service within two years of the date of this order pursuant to paragraph (b) of section 157.20 of the Commission's regulations;

(2) Tennessee's compliance with all applicable Commission regulations including, but not limited to, Part 284 and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) Tennessee's compliance with the environmental conditions listed in the appendix to this order; and

(4) Tennessee's executing firm service agreements equal to the level of service and in accordance with the terms of service presented in its precedent agreements, prior to commencing construction.

(C) Tennessee's proposed initial rates are approved as modified and discussed above.

(D) Tennessee is directed to file actual tariff records implementing the changes discussed in the body of this order to its rates, and its proposed tariff no less than 30 days and no more than 60 days prior to the commencement of service. That filing should be made as a compliance filing under filing code type 580 and will be assigned an RP docket. It will be processed separately from the instant certificate proceeding in Docket No. CP15-148-000.

(E) Tennessee shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Tennessee. Tennessee shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(F) The late motions to intervene filed by Allegheny Defense Project, Pivotal Utility Holdings, Inc. d/b/a Elizabethtown Gas, *et al.*, and Damascus Citizens for Sustainability, Inc. are granted.

(G) The protest filed jointly by Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. is dismissed as moot.

(H) Sierra Club's request for a formal hearing is denied.

(I) The motion to consolidate the proceedings pending in Docket Nos. CP15-520-000 and CP 16-4-000 filed by Allegheny, Appalachian Mountain Advocates, Damascus Citizens, Delaware Riverkeeper, and Sierra Club is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A**Parties**

Allegheny Defense Project	Morehead Utility Plant Board
Anadarko Energy Services Company	Municipal Gas Authority of Mississippi
Appalachian Mountain Advocates	National Fuel Gas Distribution
Athens Utilities	Corporation
Atmos Energy Corporation	National Grid Gas Delivery Companies
Atmos Energy Marketing LLC	New Jersey Natural Gas Company
Calpine Energy Services, L.P.	New York State Electric and Gas
CenterPoint Energy Resources Corp.	Corporation
Chattanooga Gas Company	NJR Energy Services Company
Chevron U.S.A. Inc.	North Alabama Gas District
City of Clarksville	Northern Illinois Gas Company d/b/a
City of Clarksville Gas and Water	Nicor Gas Company
Department	Piedmont Natural Gas Company
Consolidated Edison Company of New	Pivotal Utility Holdings d/b/a
York, Inc. and Orange and Rockland	Elizabethtown Gas
Utilities, Inc.	Portland Natural Gas System, City of
City of Corinth Public Utilities	Portland
Commission	PSEG Energy Resources & Trade LLC
Cross Timbers Energy Services, Inc.	Range Resources-Appalachia, LLC
Damascus Citizens for Sustainability,	Savannah Utilities
Inc.	Sheffield Utilities
Delta Natural Gas Company, Inc.	Shell Energy North America (US), L.P.
Direct Energy Business Marketing, LLC	Sierra Club
City of Florence, Alabama	Springfield Gas System, City of
Greater Dickson Gas Authority	Springfield
Hardeman Fayette Utility District	Statoil Natural Gas LLC
Hartselle Utilities	SWEPI LP
Henderson Utility Department	Tuscumbia Utilities and Sheffield
Holly Springs Utility Department	Utilities
Humphreys County Utility District	City of Waynesboro
City of Huntsville, Alabama	West Tennessee Public Utility District
Town of Linden	

Appendix B
Environmental Conditions

As recommended in the Environmental Assessment (EA) and discussed in this Order, this authorization includes the following conditions:

1. Tennessee Gas Pipeline Company, LLC (Tennessee) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by this Order. Tennessee must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Tennessee shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental

conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Tennessee's exercise of eminent domain authority granted under the Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Tennessee's right of eminent domain granted under NGA section 7(h) does not authorize them to increase the size of their natural gas facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Tennessee shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by the Upland Erosion Control, Revegetation, and Maintenance Plan and/or minor field realignments per landowner needs and requirements that do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. **At least 60 days before construction begins,** Tennessee shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Tennessee must file revisions to its plan as schedules change. The plan must identify:

- a. how Tennessee will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by this Order;
 - b. how Tennessee will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how Tennessee will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. Tennessee personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Tennessee will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. Tennessee personnel (if known) and specific portion of Tennessee's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Tennessee will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the environmental compliance training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Tennessee shall file updated status reports with the Secretary **on a biweekly basis until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following

reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;

c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);

d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;

e. the effectiveness of all corrective actions implemented;

f. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and

g. copies of any correspondence received by Tennessee from other federal, state, or local permitting agencies concerning instances of noncompliance, and Tennessee's response.

8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Tennessee shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).

9. Tennessee must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.

10. **Within 30 days of placing the authorized facilities in service**, Tennessee shall file an affirmative statement with the Secretary, certified by a senior company official:

a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or

b. identifying which of the Certificate conditions the company has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

11. **Prior to construction**, Tennessee shall file with the Secretary a copy of the final Chapter 105 Water Obstruction and Encroachment Permit for the project documenting

the instream work windows for the following 10 waterbodies: Bear Wallow Branch, Left Straight Run, Wildcat Hollow, Unnamed Tributary to Right Straight Run, Right Straight Run, Unnamed Tributary to Spoor Hollow Brook, Catlin Hollow Creek, two Unnamed Tributaries to Crooked Creek, and Left Straight Run and shall incorporate the appropriate time windows into its final construction plans.

12. **Prior to construction**, Tennessee shall file with the Secretary, for the review and written approval of the Director of OEP, a plan to reduce tree clearing on each parcel of land enrolled in the Clean and Green Program that would be crossed by the Western Loop or Eastern Loop as necessary to ensure the property remains eligible for the program. In the event Tennessee is not able to avoid disqualifying a property from the program, Tennessee shall describe how it would compensate the affected landowner.

13. Tennessee shall make all reasonable efforts to ensure its predicted noise levels from Compressor Station (CS) 315, CS 317, and CS 319 are not exceeded at nearby noise sensitive areas and file noise surveys showing this with the Secretary **no later than 60 days** after placing the three compressor stations in service (i.e., after project modification). If full load condition noise surveys of one or more of the stations are not possible, Tennessee shall file interim survey(s) at the maximum possible horsepower load and file the full load survey(s) **within 6 months**. However, if the noise attributable to the operation of CS 315, CS 317, and/or CS 319 at full load exceeds a day-night sound equivalent of 55 A-weighted decibels at any of the nearby noise sensitive areas, Tennessee shall file a report on what changes are needed and shall install additional noise controls to meet the level **within 1 year** of the in-service date. Tennessee shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days after it installs the additional noise controls**.